

AIR RESOURCES BOARD

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June 25, 1992

Michael D. Sewell
Monterey Bay Unified APCD
24580 Silver Cloud Court
Monterey, CA 93940

Dear Mr. Sewell:

You have asked whether the Monterey Bay Unified Air Pollution Control District can require agricultural operations to comply with the Air Toxics "Hot Spots" Information and Assessment Act of 1987. (Health and Safety Code section 44300 et seq.; all references are to the Health and Safety Code unless otherwise noted). For the following reasons, we believe that the district is authorized to do so, if the operation is emitting greater than ten tons per year of criteria pollutants and is included in the District's emission inventory or if the operation is included in the District's toxics survey list.

First, section 44320 states that the statute applies to "[any] facility which manufactures, formulates, uses, or releases" any substance listed by the Air Resources Board pursuant to section 44321 in accordance with the time schedule specified in section 44322 as well as to any facility on a district's air toxics survey. Section 44304, in turn, defines "facility" as "every structure, appurtenance, installation, and improvement on land" which is associated with a source of toxic air releases. This definition clearly encompasses agricultural operations. Facilities emitting more than ten but fewer than 25 tons per year of criteria pollutants became subject to the Act on July 1, 1989.

Second, as you noted, the Act does not contain an exemption for agricultural operations and associated sources of toxic releases, although the Act does exempt other facilities (see sections 44324 and 44325). While a permit may not be required by any district for "any equipment used in agricultural operations in the growing of crops on the raising of fowl or animals" (section 42310(e)), such non-permitted sources are not exempt from the Act. Also, the Emission Inventory Criteria and Guidelines Regulation set forth in Title 17, California Code of Regulations, section 93300 et seq. does not contain an exemption for agricultural operations and those which emit greater than ten tons per year could be required by the District to identify and account for any listed substance used, manufactured, formulated, or released from "any distinct emitting process or device" (17 CCR section 93332 and Appendices C-1 and C-11).

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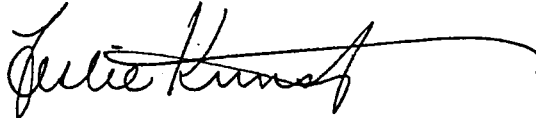
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In practice, most districts do not include emissions from strictly agricultural operations in their criteria pollutant inventories since they do not issue permits to these sources. Generally, these agricultural operations are considered "area sources" subject to emissions data compilation by the Air Resources Board pursuant to section 44345(b). However, nothing in the statute prevents districts from requiring these sources to submit toxic inventories and comply with the other requirements of the Act.

We have not addressed agricultural operations which emit fewer than ten tons per year of criteria pollutants because your letter did not mention these smaller operations. Please refer to Appendix E of the ARB Guidelines Regulation for requirements applicable to such facilities. If you wish to discuss this matter further, please call me at (916) 323-9611 .

Sincerely,



Leslie M. Krinsk
Senior Staff Counsel

cc: Michael Kenny

LMK/REJ/J08083

Subject: Interpretation of HSC 44324

Date: Wed, 11 Feb 2004 11:53:40 -0800

From: "Floyd Vergara, Esq., P.E." <fvergara@arb.ca.gov> **Internal**

Organization: Air Resources Board

To: Chris Halm <chalm@arb.ca.gov>, Dale Shimp <dshimp@arb.ca.gov>

Chris,

It has been the opinion of the ARB's Office of Legal Affairs since the beginning of the AB2588 program that HSC 44324 is to be construed narrowly. To wit, sec. 44324 was originally intended to exempt the use of economic poisons (pesticides) from the inventory requirements, particularly on farms and ag operations. But HSC 44324 was not intended to exempt every facility that happens to spray Round-Up or rat poison on its premises. As you indicated, it would be unreasonable to interpret sec. 44324 as exempting all facilities from the AB2588 inventory process that use pesticides incidental to their normal business conduct since that would eviscerate the legislative purpose in enacting AB2588 of serving "the public interest to ascertain and measure the amounts and types of hazardous releases and potentially hazardous releases from specific sources that may be exposing people to those releases, and to assess the health risks to those who are exposed." (HSC 44301(h)).

So the bottom line is the emissions from economic poisons themselves are exempted from the AB2588 process, but emissions of other toxic or hazardous air pollutants from facilities are subject to AB2588 requirements even if those facilities have incidental use of pesticides (e.g., a chrome plater that sprays Round-Up on its parking lot is still required to report its hexavalent chrome emissions). This also applies to farms and ag operations; only the pesticide emissions from farm and ag operations are exempt from AB2588. Emissions of other toxic or hazardous air pollutants from farm and ag operations (e.g., diesel PM from the use of water pumps) would still be subject to AB2588, since those emissions are not caused by "economic poisons...employed in their pesticidal use."

Please let me know if you have any other questions.

Floyd

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